

Part 6

Malted Beverage Act

32B-1-601 Title.

This part is known as the "Malted Beverage Act."

Enacted by Chapter 276, 2010 General Session

32B-1-602 Definitions.

As used in this part:

- (1) "Malted beverage" means:
 - (a) beer;
 - (b) a flavored malt beverage; and
 - (c) heavy beer.
- (2) "Packaging" means the outer packaging that is visible to a consumer such as a carton, case, or other wrapper of a container.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-1-603 Power of the commission and department to classify flavored malt beverages.

- (1) The commission and department shall regulate a flavored malt beverage as liquor.
- (2)
 - (a) The department shall make available to the public on the Internet a list of the flavored malt beverages authorized to be sold in this state as liquor.
 - (b) The list described in Subsection (2)(a) shall be updated at least quarterly.
- (3)
 - (a) A manufacturer shall file, under penalty of perjury, a report with the department listing each flavored malt beverage manufactured by the manufacturer that the manufacturer wants to distribute in this state subject to the manufacturer holding:
 - (i) a brewery manufacturing license issued in accordance with Chapter 11, Part 5, Brewery Manufacturing License; or
 - (ii) a certificate of approval.
 - (b) A manufacturer may not distribute or sell in this state a flavored malt beverage if the manufacturer does not list the flavored malt beverage in a filing with the department in accordance with this Subsection (3) before distributing or selling the flavored malt beverage.
- (4) The department may require a manufacturer of a flavored malt beverage to provide the department with a copy of the following filed with the federal Alcohol and Tobacco Tax and Trade Bureau, pursuant to 27 C.F.R. Sec. 25.55:
 - (a) a statement of process; or
 - (b) a formula.
- (5)
 - (a) A manufacturer of an alcoholic product that the department is classifying or proposes to classify as a flavored malt beverage may submit evidence to the department that its alcoholic product should not be treated as liquor under this section because the alcoholic product:
 - (i) is obtained by fermentation, infusion, or decoction of a malted grain;

- (ii) is produced by processing, filtration, or another method of manufacture that is generally recognized as a traditional process in the production of beer as described in 27 C.F.R. Sec. 25.55;
- (iii) does not have added to it a flavor or other ingredient containing alcohol, except for a hop extract; and
- (iv)
 - (A) is not one for which the producer is required to file a formula for approval with the federal Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 C.F.R. Sec. 25.55; or
 - (B) is exempt under Subdivision (f) of 27 C.F.R. Sec. 25.55.
- (b) The department shall review the evidence submitted by the manufacturer under this Subsection (5).
- (c) The department shall make available to the public on the Internet a list of the alcoholic products authorized under this Subsection (5) to be sold as beer in this state.
- (d) A decision of the department under this Subsection (5) may be appealed to the commission.

Enacted by Chapter 276, 2010 General Session

32B-1-604 Requirements for labeling and packaging -- Authority of the commission and department.

- (1) A manufacturer may not distribute or sell a malted beverage:
 - (a) unless the label and packaging of the malted beverage:
 - (i) complies with the federal label requirements of 27 C.F.R. Parts 7, 13, and 16; and
 - (ii) clearly gives notice to the public that the malted beverage is an alcoholic product; and
 - (b) until the day on which the department in accordance with this title and rules of the commission approves the label and packaging of the malted beverage.
- (2) The department shall review the label and packaging of a malted beverage to ensure that the label and packaging meet the requirements of Subsection (1)(a).
- (3) A manufacturer may comply with the requirement of Subsection (1)(a)(ii) by including on a label and packaging for a malted beverage any of the following terms:
 - (a) beer;
 - (b) ale;
 - (c) porter;
 - (d) stout;
 - (e) lager;
 - (f) lager beer; or
 - (g) another class or type designation commonly applied to a malted beverage that conveys by a recognized term that the product contains alcohol.

Enacted by Chapter 276, 2010 General Session

32B-1-605 General procedure for approval.

- (1) To obtain approval of the label and packaging of a malted beverage, the manufacturer of the malted beverage shall submit an application to the department for approval.
- (2) The application described in Subsection (1) shall be on a form approved by the department and include the following:
 - (a) a copy of a federal certificate of label approval from the Department of Treasury, Tax and Trade Bureau, for each brand and label for which the manufacturer is seeking approval;
 - (b) a complete set of original labels for each size of container of the malted beverage;

- (c) a description of the size of the container on which a label will be placed;
 - (d) a description of each type of container of the malted beverage; and
 - (e) a description of any packaging for the malted beverage.
- (3) The department may assess a reasonable fee for reviewing a label and packaging for approval.
- (4)
- (a) The department shall notify a manufacturer within 30 days after the day on which the manufacturer submits an application whether the label and packaging is approved or denied.
 - (b) If the department determines that an unusual circumstance requires additional time, the department may extend the time period described in Subsection (4)(a).
- (5) A manufacturer shall obtain the approval of the department of a revision of a previously approved label and packaging before a malted beverage using the revised label and packaging may be distributed or sold in this state.
- (6)
- (a) The department may revoke a label and packaging previously approved upon a finding that the label and packaging is not in compliance with this title or rules of the commission.
 - (b) The department shall notify the person who applies for the approval of a label and packaging at least five business days before the day on which a label and packaging approval is considered revoked.
 - (c) After receiving notice under Subsection (6)(b), a manufacturer may present written argument or evidence to the department on why the revocation should not occur.
- (7) A manufacturer that applies for approval of a label and packaging may appeal a denial or revocation of a label and packaging approval to the commission.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-1-606 Special procedure for flavored malt beverages.

- (1) If a flavored malt beverage is labeled or packaged in a manner that is similar to a label or packaging used for a nonalcoholic beverage, a manufacturer of the flavored malt beverage may not distribute or sell the flavored malt beverage in this state until the day on which the manufacturer receives approval of the labeling and packaging from the department in accordance with:
- (a) Sections 32B-1-604 and 32B-1-605; and
 - (b) this section.
- (2) The department may not approve the labeling and packaging of a flavored malt beverage described in Subsection (1) unless in addition to the requirements of Section 32B-1-604 the labeling and packaging complies with the following:
- (a) The label on the flavored malt beverage shall bear a prominently displayed label or a firmly affixed sticker that provides the following information:
 - (i) the statement:
 - (A) "alcoholic beverage"; or
 - (B) "contains alcohol"; and
 - (ii) the alcohol content of the flavored malt beverage.
 - (b) Packaging of a flavored malt beverage shall prominently include, either imprinted on the packaging or imprinted on a sticker firmly affixed to the packaging, the statement:
 - (i) "alcoholic beverage"; or
 - (ii) "contains alcohol".

- (c) A statement required by Subsection (2)(a) or (b) shall appear in a format required by rule made by the commission.
- (d) A statement of alcohol content required by Subsection (2)(a)(ii):
 - (i) shall state the alcohol content as a percentage of alcohol by volume or by weight;
 - (ii) may not use an abbreviation, but shall use the complete words "alcohol," "volume," or "weight"; and
 - (iii) shall be in a format required by rule made by the commission.
- (3) The department may reject a label or packaging that appears designed to obscure the information required by Subsection (2).
- (4) To determine whether a flavored malt beverage is described in Subsection (1) and subject to this section, the department may consider in addition to other factors one or more of the following factors:
 - (a) whether the coloring, carbonation, and packaging of the flavored malt beverage:
 - (i) is similar to those of a nonalcoholic beverage or product; or
 - (ii) can be confused with a nonalcoholic beverage;
 - (b) whether the flavored malt beverage possesses a character and flavor distinctive from a traditional malted beverage;
 - (c) whether the flavored malt beverage:
 - (i) is prepackaged;
 - (ii) contains high levels of caffeine and other additives; and
 - (iii) is marketed as a beverage that is specifically designed to provide energy;
 - (d) whether the flavored malt beverage contains added sweetener or sugar substitutes; or
 - (e) whether the flavored malt beverage contains an added fruit flavor or other flavor that masks the taste of a traditional malted beverage.

Enacted by Chapter 276, 2010 General Session

32B-1-607 Rulemaking authority.

The commission may adopt rules necessary to implement this part.

Enacted by Chapter 276, 2010 General Session

32B-1-608 Disciplinary proceeding for violation.

A person who violates this part is subject to a disciplinary proceeding under Chapter 3, Disciplinary Actions and Enforcement Act.

Enacted by Chapter 276, 2010 General Session